

61 Pages

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

<p>In re:</p> <p>SK FOODS, L.P., a California Limited Partnership,</p> <p style="text-align: center;">Debtor.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.: 09-29162-D-11</p> <p>Chapter 11</p> <p>DCN RAL – 21</p> <p>Date: June 19, 2009</p> <p>Time: 10:00 AM</p> <p>Place: U. S. Bankruptcy Court Courtroom 33, 6th Floor 501 I Street Sacramento, CA</p> <p>Judge: Honorable Thomas C. Holman</p>
<p>In re:</p> <p>RHM INDUSTRIAL/SPECIALTY FOODS, INC., a California Corporation, d/b/a Colusa County Canning Co.,</p> <p style="text-align: center;">Debtor</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	

EXHIBIT A TO D TO DECLARATION OF DARRELL J. GRAHAM IN SUPPORT OF KRAFT FOODS' OBJECTION TO DEBTOR'S NOTICE OF CURE AMOUNTS FOR POSSIBLE ASSUMPTION, SALE AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS

Exhibit	Document	Page Numbers
A	Redacted copy of the Contract	2 - 3
B	Plea and Cooperation Agreement of Randall Rahal	4 - 32
C	Plea and Cooperation Agreement of Robert Watson	33 - 44
D	Plea and Cooperation Agreement of Jennifer Lou Dahlman	45 - 61

CONTRACT HEADER

Contract # / Ver. Title	Contract Date	Start Date	End Date	Version	Vendor Terms	Freight Terms	FOB Code	Ship Via	Purchasing Old
000020149 3 VEGETABLES - TOMATOES AC 980764 SK 10005	7/21/08	7/21/08	7/21/08	1.000000	Q 37 SCOTT MANI	Q 37 SCOTT MANI	02	A4 PER CONSIG MAST OVER	0000016192

ITEM DETAIL

Resource	Description	Cls Subc Plan#	Str Date	End Date	Stores	Mkt	Commit Qty/	Break Qty/	Unit Price/	End Date	Ex	Value	Order	Bus
04013678400100	VEG DR55GA TOMATOES	75 IT	200	7/21/08	1.000000	Corporate	2,000,000.000000	0.000000	0.000000				730781	
						GA Campaign							730781	
						QA Little Chu							730781	

PURCHASE ITEM HISTORY

Resource	Description	UM Warehouse	Commitment Qty/	Actual Qty/	Balance Qty/	Received Qty/	Invoiced Qty/
04013678400000	VEG 707260 TOMATOES LB	Corporate	2,000,000.000000		2,000,000.000000		

GA Campaign
QA Little Chu
Corporate
GA Campaign
QA Little Chu

SPECIAL CHARGES

Charge Description	Warehouse	Resource	Description	Qty Mod	Base	Mod	Effect	Unit Price	Amount
Freight	ALL			Y	Y		7/01/07		
Facility Charge	ALL			Y	Y		7/01/07		

COMMENTS

1 ***** 2008 PRODUCTION *****

- 1 SPECIFICATION(S) REFERENCED ABOVE
- 2 PREVIOUSLY FURNISHED TO AND RECEIVED
- 3 SK FOODS TO BILL ANY UNSHIPED
- 4 BY SUPPLIER.
- 5 PRODUCT THAT REMAINS ON KRAFT'S 2008
- 6 TOMATO CROP CONTRACTS AS OF JULY 1, 2009
- 7 THE MATERIAL CODE NUMBER(S) MUST APPEAR
- 8 ALL BILL AND HOLD INVOICES WILL BE ISSD
- 9 ON ALL CONTAINERS, INVOICES AND
- 10 FOR PAYMENT WITHIN 15 DAYS, AT WHICH
- 11 CORRESPONDENCE.
- 12 TIME TITLE OF PRODUCT IS TRANSFERRED TO
- 13 KRAFT AND NO STORAGE CHARGES WILL BE
- 14 SELLER IS TO NOTIFY PLANTS AND ENTER
- 15 CHARGED AND SK FOODS TO SHIP TOMATO
- 16 IMMEDIATELY OF AN INTERAUTION IN
- 17 PRODUCTS PER KRAFT FACILITY RELEASES,
- 18 PRODUCTION WHICH MAY AFFECT OR DELAY
- 19 SHIPMENTS.
- 20 07/22/08 VERM2 Issued to to correct
- 21 resource code error as per email from
- 22 CERTIFICATE OF ANALYSIS: PRIOR TO

CONTRACT HEADER

Contract# / Ver. Title	ST Vendor	TY Buyer	Contract Date	Start Date	End Date	Version	Vendor Terms	Freight Terms	FOB Code	Ship Via	Purchasing Old Coordinator Contract #
000020149 3 VEGETABLES - TOMATOES AC 980764	SK FOODS	C 17 SCOTT MANI	7/21/06	7/21/06		9/08/06	023 NET 45 DYS 01	COLLECT	02	0P5IN	R4 PER CONSIG MARY OVERT 0000010192

COMMENTS

Type	Seq Text
	15 Scott Manion dated 07/22/09, SM/SCI
	16 ACCEPTANCE OF EACH SHIPMENT, VENDOR MUST
	17 SUBMIT A CERTIFICATE OF ANALYSIS TO
	18 RECEIVING PLANT SHOWING ACTUAL ANALYSIS
	19 9/8/08 - VERSION #3: COORDINATOR
	20 OF MATERIAL SHIPPED.
	21 RESPONSIBILITIES CHANGED TO M. OVERTON.
	22 KRAFT TO RETURN BINS QUARTERLY OR PAY
	23 \$60.00/BIN FOR NEW BINS PURCHASED BY
	24 SK FOODS.
	25 PLEASE SIGN AND RETURN THE ACCEPTANCE
	26 COPY TO BUYER WITHIN (5) BUSINESS DAYS.

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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE EASTERN DISTRICT OF CALIFORNIA
16

17 UNITED STATES OF AMERICA,)
18)
Plaintiff,) No.
19)
v.)
20) PLEA and COOPERATION AGREEMENT
RANDALL LEE RAHAL,)
21)
Defendant.)
22)
23

24 I.

25 INTRODUCTION

26 A. Scope of Agreement: The Information to be filed in this
27 case charges the defendant, Randall Lee Rahal ("Rahal"), with
28

1 conspiring to conduct the affairs of an enterprise through a pattern
2 of racketeering activity in violation of 18 U.S.C. § 1962(d); money
3 laundering in violation of 18 U.S.C. § 1957; and participating in,
4 and aiding and abetting a conspiracy to suppress and eliminate
5 competition by allocating contracts, fixing prices, and rigging bids
6 in unreasonable restraint of interstate trade and commerce, in
7 violation of the Sherman Act, 15 U.S.C. § 1, and 18 U.S.C. § 2.

9 This document contains the complete Plea and Cooperation Agreement
10 between the United States Attorney's Office for the Eastern District
11 of California and the United States Department of Justice, Antitrust
12 Division (the "government"), and the defendant regarding this case.
13 This Plea and Cooperation Agreement is limited to the United States
14 Attorney's Office for the Eastern District of California and the
15 United States Department of Justice, Antitrust Division, and cannot
16 bind any other federal, state, or local prosecuting, administrative,
17 or regulatory authorities.

19 **B. Court Not a Party:** The Court is not a party to this Plea
20 and Cooperation Agreement. Sentencing is a matter solely within the
21 discretion of the Court, the Court is under no obligation to accept
22 any recommendations made by the government, and the Court may in its
23 discretion impose any sentence it deems appropriate up to and
24 including the statutory maximum stated in this Plea and Cooperation
25 Agreement. If the Court should impose any sentence up to the
26 maximum established by the statute, the defendant cannot, for that
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28

1 reason alone, withdraw his guilty plea, and he will remain bound to
2 fulfill all of the obligations under this Plea and Cooperation
3 Agreement. The defendant understands that neither the prosecutor,
4 defense counsel, nor the Court can make a binding prediction or
5 promise regarding the sentence he will receive.
6

7 II.

8 DEFENDANT'S OBLIGATIONS

9 A. **Waiver of Indictment and Guilty Plea:** The defendant will
10 waive indictment by grand jury, waive venue, and plead guilty to a
11 three-count Information, substantially in the form attached hereto
12 as Exhibit B, charging him with conspiring to conduct the affairs of
13 an enterprise through a pattern of racketeering activity in
14 violation of 18 U.S.C. § 1962(d); money laundering in violation of
15 18 U.S.C. § 1957; and price fixing in violation of 15 U.S.C. § 1.
16 The defendant agrees that he is in fact guilty of those charges and
17 that the facts set forth in the Factual Basis attached hereto as
18 Exhibit A are true and accurate.
19

20 B. **Restitution:** The Mandatory Victim Restitution Act requires
21 the Court to order restitution to the victims of certain offenses.
22 If such restitution is ordered, payment should be by cashier's or
23 certified check made payable to the Clerk of the Court. The
24 defendant understands that this Plea and Cooperation Agreement is
25 voidable by the government if he fails to pay the restitution as
26 ordered by the Court. Defendant further agrees that he will not
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1 seek to discharge any restitution obligation or any part of such
2 obligation in any bankruptcy proceeding.

3 **C. Special Assessment:** The defendant agrees to pay a special
4 assessment of \$300 at the time of sentencing by delivering a check
5 or money order payable to the United States District Court to the
6 United States Probation Office immediately before the sentencing
7 hearing.
8

9 **D. Agreement to Cooperate:** The defendant agrees to cooperate
10 fully with the government and any other federal, state, or local law
11 enforcement agency, as directed by the government. As used in this
12 Agreement, "cooperation" requires the defendant: (1) to respond
13 truthfully and completely to all questions, whether in interviews,
14 in correspondence, telephone conversations, before a grand jury, or
15 at any trial or other court proceeding; (2) to attend all meetings,
16 grand jury sessions, trials, and other proceedings at which the
17 defendant's presence is requested by the government or compelled by
18 subpoena or court order; (3) to produce voluntarily any and all
19 documents, records, or other tangible evidence requested by the
20 government; (4) not to participate in any criminal activity while
21 cooperating with the government; and (5) to disclose to the
22 government the existence and status of all money, property, or
23 assets, of any kind, derived from or acquired as a result of, or
24 used to facilitate the commission of, the defendant's illegal
25 activities or the illegal activities of any conspirators.
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1 If the defendant commits any crimes or if any of the
2 defendant's statements or testimony prove to be knowingly false,
3 misleading, or materially incomplete, or if the defendant otherwise
4 violates this Plea and Cooperation Agreement in any way, the
5 government will no longer be bound by its representations to the
6 defendant concerning the limits on criminal prosecution and
7 sentencing as set forth herein. The determination whether the
8 defendant has violated the Plea and Cooperation Agreement will be
9 under a preponderance of the evidence standard. If the defendant
10 violates the Plea and Cooperation Agreement, he shall thereafter be
11 subject to prosecution for any federal criminal violation of which
12 the government has knowledge, including but not limited to perjury,
13 false statements, and obstruction of justice. Because disclosures
14 pursuant to this Agreement will constitute a waiver of the Fifth
15 Amendment privilege against compulsory self-incrimination, any such
16 prosecution may be premised on statements and/or information
17 provided by the defendant. Moreover, any prosecutions that are not
18 time-barred by the applicable statute of limitations as of the date
19 of this Agreement may be commenced in accordance with this
20 paragraph, notwithstanding the expiration of the statute of
21 limitations between the signing of this Agreement and the
22 commencement of any such prosecutions. The defendant agrees to
23 waive all defenses based on the statute of limitations or delay of
24 prosecution with respect to any prosecutions that are not time-

1 barred as of the date of this Agreement.

2 If it is determined that the defendant has violated any
3 provision of this Agreement or if the defendant successfully moves
4 to withdraw his plea: (1) all statements made by the defendant to
5 the government or other designated law enforcement agents, or any
6 testimony given by the defendant before a grand jury or other
7 tribunal, whether before or after this Agreement, shall be
8 admissible in evidence in any criminal, civil, or administrative
9 proceedings hereafter brought against the defendant; and (2) the
10 defendant shall assert no claim under the United States
11 Constitution, any statute, Rule 11(f) of the Federal Rules of
12 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or
13 any other federal rule, that statements made by the defendant before
14 or after this Agreement, or any leads derived therefrom, should be
15 suppressed. By signing this Agreement, the defendant waives any and
16 all rights in the foregoing respects.

19 **E. Civil Forfeiture:** The defendant agrees to sign a
20 Stipulation for Final Judgment of Forfeiture in the pending civil
21 action, U.S. v. Approximately \$415,000.00 in U.S. Currency seized
22 from Sun National Bank, et al., 2:08-CV-01899-GEB-GGH, forfeiting to
23 the United States all of his and Intramark USA, Inc.'s ("Intramark")
24 right, title, and interest in the defendant funds. This stipulation
25 must be signed at least seven days prior to sentencing.

27 **F. Payment of Fine:** The defendant agrees to pay a criminal
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1 fine if so ordered. The government's recommendation with respect to
2 any such criminal fine is set forth in Section III.D of this Plea
3 and Cooperation Agreement.

4
5 **III.**

6 **THE GOVERNMENT'S OBLIGATIONS**

7 **A. Incarceration Range:** The government will recommend that
8 the defendant be sentenced to the bottom of the applicable guideline
9 range for his offense as determined by the United States Probation
10 Office.

11 **B. Acceptance of Responsibility:** The government agrees that a
12 three-level reduction in defendant's offense level for his full and
13 clear demonstration of acceptance of responsibility is appropriate
14 under U.S.S.G. § 3E1.1, will not oppose such a reduction and will so
15 move under § 3E1.1(b), so long as the defendant pleads guilty, meets
16 with and assists the probation officer in the preparation of the
17 pre-sentence report, is truthful and candid with the probation
18 officer and the Court, and does not otherwise engage in conduct that
19 constitutes obstruction of justice within the meaning of U.S.S.G. §
20 3C1.1, either in the preparation of the pre-sentence report or
21 during the sentencing proceeding.

22 **C. Reduction of Sentence for Cooperation:** The government
23 agrees to recommend at the time of sentencing that the defendant's
24 sentence of imprisonment be reduced to reflect his substantial
25 assistance to the government in the investigation and prosecution of
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1 others, pursuant to U.S.S.G. § 5K1.1. The defendant understands
2 that he must comply with paragraph II(D) of this Plea and
3 Cooperation Agreement. The defendant understands that the
4 government's recommended reduction in his sentence will depend upon
5 the level of assistance the government determines that the defendant
6 has provided. The defendant further understands that a motion
7 pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is not
8 binding on the Court.
9

10 Other than as set forth above, the government agrees that any
11 incriminating information provided by the defendant during his
12 cooperation will not be used in determining the applicable guideline
13 range in his case, pursuant to U.S.S.G. § 1B1.8.
14

15 **D. Fine:** The government agrees to recommend that any criminal
16 fine imposed on the defendant be no higher than the midpoint of the
17 applicable fine range, given the defendant's offense level and
18 sentencing range.

19 **E. Other Considerations:** To the extent the defendant enters a
20 guilty plea and is sentenced on Counts One, Two and Three of the
21 Information to be filed in this matter, the government, to include
22 the United States Attorney's Office for the District of New Jersey,
23 will not initiate any further criminal charges against the defendant
24 arising out of the same facts and circumstances as the instant
25 charges.
26

27 / / / /
28

1 IV.

2 ELEMENTS OF THE OFFENSE

3 With respect to Count One of the Information to be filed in
4 this matter, which charges the defendant with conspiring to conduct
5 the affairs of an enterprise through a pattern of racketeering
6 activity in violation of 18 U.S.C. § 1962(d), at trial the
7 government would have to prove beyond a reasonable doubt the
8 following elements:
9

10 First, that certain leaders, employees and associates of SK
11 Foods, L.P., and its related corporate entities ("SK Foods"), a
12 manufacturer and marketer of bulk tomato and other food products
13 with principal places of business in Monterey, Williams, Ripon, and
14 Lemoore, California, constituted an enterprise, that is, a legal
15 entity, a partnership or group of individuals associated in fact;
16

17 Second, that SK Foods was engaged in interstate commerce;

18 Third, that no later than January 2004 and continuing through
19 at least April 2008, there was an agreement between two or more
20 persons employed by or associated with SK Foods to conduct SK Foods'
21 affairs through a "pattern of racketeering activity" as defined by
22 Title 18, United States Code, Section 1961(a) & (5), namely,
23 multiple acts indictable under Title 18, United States Code,
24 Sections 1341, 1343 and 1346; N.J. STAT. ANN. § 2C:21-10 (2008); CAL.
25 PENAL CODE § 641.3 (2008); and TEX. PENAL CODE § 32.43 (2008), the last
26 of which was to occur within ten years after the commission of a
27
28

1 prior such act;

2 Fourth, the defendant was employed by or associated with SK
3 Foods; and

4 Fifth, the defendant joined in the illegal agreement referenced
5 above, knowing of its object and intending to help accomplish it.

6 With respect to Count Two of the Information to be filed in
7 this matter, which charges the defendant with money laundering in
8 violation of 18 U.S.C. § 1957, at trial the government would have to
9 prove beyond a reasonable doubt the following elements:
10

11 First, that the defendant knowingly engaged in a monetary
12 transaction;

13 Second, that the defendant knew the transaction involved
14 criminally derived property;

15 Third, that the property had a value greater than \$10,000;

16 Fourth, that the property was, in fact, derived from specific
17 acts otherwise indictable under Title 18, United States Code,
18 Sections 1341, 1343 and 1346; N.J. STAT. ANN. § 2C:21-10 (2008); CAL.
19 PENAL CODE § 641.3 (2008); and TEX. PENAL CODE § 32.43 (2008); and
20

21 Fifth, that the transaction occurred in the United States.

22 With respect to Count Three of the Information to be filed in
23 this matter, which charges the defendant with price fixing in
24 violation of 15 U.S.C. § 1 and aiding and abetting in violation of
25 18 U.S.C. § 2, at trial the government would have to prove beyond a
26 reasonable doubt the following elements:
27
28

1 First, that the defendant entered into or aided and abetted a
2 conspiracy;

3 Second, that the conspiracy was an unreasonable restraint of
4 trade; and

5 Third, that the conspiracy was in or affected interstate
6 commerce in the United States.
7

8 V.

9 **MAXIMUM SENTENCE**

10 **A. Maximum Penalty:** With respect to Count One of the
11 Information to be filed in this matter, which charges the defendant
12 with conspiring to conduct the affairs of an enterprise through a
13 pattern of racketeering activity in violation of 18 U.S.C. §
14 1962(d), the maximum sentence that the Court can impose is twenty
15 years of incarceration; a fine of \$250,000 or twice the gross gain
16 or gross loss resulting from the offense, whichever is greatest; a
17 three-year period of supervised release; and a special assessment of
18 \$100.
19

20 With respect to Count Two of the Information to be filed in
21 this matter which charges the defendant with money laundering in
22 violation of 18 U.S.C. § 1957, the maximum sentence that the Court
23 can impose is ten years of incarceration, a fine of \$250,000 or
24 twice the amount of the criminally derived property involved in the
25 transaction, a three-year period of supervised release, and a
26 special assessment of \$100.
27
28

1 With respect to Count Three of the Information to be filed in
2 this matter, which charges the defendant with price fixing in
3 violation of 15 U.S.C. § 1 and aiding and abetting in violation of
4 18 U.S.C. § 2, the maximum sentence the Court can impose is ten
5 years incarceration; a fine in an amount equal to the greatest of
6 (1) \$1,000,000, (2) twice the gross pecuniary gain the conspirators
7 derived from the crime, or (3) twice the gross pecuniary loss caused
8 to the victims of the crime by the conspirators; a three-year period
9 of supervised release; and a special assessment of \$100.

11 **B. Violations of Supervised Release:** The defendant
12 understands that if he violates a condition of supervised release at
13 any time during the term of supervised release, the Court may revoke
14 the term of supervised release and require the defendant to serve up
15 to two additional years of imprisonment.

17 **VI.**

18 **SENTENCING DETERMINATION**

19 **A. Statutory Authority:** The defendant understands that the
20 Court must consult the Federal Sentencing Guidelines (as promulgated
21 by the Sentencing Commission pursuant to the Sentencing Reform Act
22 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as
23 modified by United States v. Booker and United States v. Fanfan,
24 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account
25 when determining a final sentence. The defendant understands that
26 the Court will determine a non-binding and advisory guideline
27
28

1 sentencing range for this case pursuant to the Sentencing
2 Guidelines. The defendant further understands that the Court will
3 consider whether there is a basis for departure from the guideline
4 sentencing range (either above or below the guideline sentencing
5 range) because there exists an aggravating or mitigating
6 circumstance of a kind, or to a degree, not adequately taken into
7 consideration by the Sentencing Commission in formulating the
8 Guidelines. The defendant further understands that the Court, after
9 consultation and consideration of the Sentencing Guidelines, must
10 impose a sentence that is reasonable in light of the factors set
11 forth in 18 U.S.C. § 3553(a).

12
13 **B. Stipulations Affecting Guidelines Calculations:** The
14 government and the defendant agree that there is no material dispute
15 as to the following sentencing guidelines variables and therefore
16 stipulate and agree to the following:
17

18 **1. Offense Level for Racketeering Conspiracy Count:**

19 **a. Applicable Guidelines Section:** With respect to
20 the charge of conspiring to conduct the affairs of an enterprise
21 through a pattern of racketeering activity in violation of 18 U.S.C.
22 § 1962(d), pursuant to U.S.S.G. § 2E1.1 the defendant's base offense
23 level is the greater of 19 or the offense level applicable to the
24 underlying racketeering activity. In this instance, the guidelines
25 sections applicable to the underlying racketeering activity
26 committed by the defendant are U.S.S.G. §§ 2B4.1 and 2B1.1. Because
27
28

1 the guidelines section resulting in the highest offense level is §
2 2B4.1, and loss amounts under §§ 2B4.1 and 2B1.1 group, the offense
3 level for the underlying racketeering activity is determined under §
4 2B4.1.

5
6 **b. Offense Level Under § 2B4.1:** The offense level
7 applicable to the underlying racketeering activity related to the
8 defendant's commercial bribery and honest services fraud, and mail
9 fraud is calculated as follows:

10 • **Base Offense Level Under § 2B4.1:** Pursuant
11 to § 2B4.1, the base offense level is 8.

12 • **Specific Offense Characteristics:** Pursuant
13 to § 2B4.1(b)(1), the parties agree that at an evidentiary hearing
14 the government is currently in a position to prove that the amount
15 of loss attributable to the commercial bribery and honest services
16 fraud committed by the defendant, and relevant conduct, and the loss
17 attributable to the mail fraud, is greater than \$400,000, but less
18 than \$1,000,000. Consequently, the base offense level is increased
19 by 14.
20

21 • **Adjusted Offense Level Under § 2B4.1:** As a
22 result of the foregoing stipulations, the adjusted offense level
23 applicable to the underlying racketeering activity related to the
24 defendant's commercial bribery and honest services fraud, and mail
25 fraud is 22.
26

27 **c. Racketeering Conspiracy Count Offense Level:** As
28

1 a result of the foregoing stipulations, the adjusted offense level
2 for the racketeering conspiracy count is a level 22.

3 **2. Offense Level for Money Laundering Count:**

4 **a. Base Offense Level:** Pursuant to U.S.S.G. §
5
6 2S1.1(a) (1) the defendant's base offense level with respect to the
7 money laundering charge is 22, since that is the offense level for
8 the underlying offense from which the laundered funds were derived.

9 **b. Specific Offense Characteristics:** Pursuant to
10 U.S.S.G. § 2S1.1(b) (2) (A), because the defendant is pleading guilty
11 to conduct criminalized by 18 U.S.C. § 1957, the base offense level
12 is increased by 1 level.

13 **c. Money Laundering Count Offense Level:** As a result
14 of the foregoing stipulations, the adjusted offense level for the
15 money laundering count is 23.

16 **3. Offense Level for Violations of the Sherman Act:**

17 **a. Base Offense Level:** Pursuant to U.S.S.G. §
18
19 2R1.1(a) the defendant's base offense level with respect to Count
20 Three is 12.

21 **b. Specific Offense Characteristics:** Because the
22 defendant's conduct involved participation in an agreement to submit
23 non-competitive bids, the base offense level is increased by 1 level
24 pursuant to U.S.S.G. § 2R1.1(b) (1). Pursuant to U.S.S.G. §
25 2R1.1(b) (2), because the volume of commerce attributable to the
26 defendant is greater than \$10,000,000, but less than \$40,000,000,
27
28

1 the base offense level is increased by an additional 4 levels.

2 **c. Sherman Act Count Offense Level:** As a result of
3 the foregoing stipulations, the adjusted offense level with respect
4 to Count Three is 17.

5 **4. Application of Multiple Count Rules in Chapter Three:**
6 Pursuant to U.S.S.G. § 3D1.2(d), the offenses covered in Counts One
7 through Three of the Information to be filed in this case merge for
8 grouping purposes, resulting in an offense level of 23.

9 **5. Aggravating Role in Offense:** Because the defendant
10 served as a manager or supervisor with respect to the criminal
11 activity charged, and that activity involved five or more
12 participants and was otherwise extensive, defendant's offense level
13 is increased by 3 levels.

14 **6. Total Offense Level:** Pursuant to the foregoing
15 stipulations, defendant's total offense level is 26.

16 **7. Acceptance of Responsibility:** Pursuant to § 3E1.1 and
17 as described in more detail in paragraph III(B) above, the
18 defendant's total offense level is decreased by three levels because
19 of his acceptance of responsibility. The Adjusted Total Offense
20 Level is therefore 23.

21 **8. Criminal History:** The parties agree that the
22 defendant's criminal history is to be determined by United States
23 Probation.

24 **9. Departures or Other Enhancements or Reductions:** The
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1 parties stipulate and agree that they will not seek or argue in
2 support of any other specific offense characteristics, Chapter Three
3 adjustments or cross-references, other than those contemplated in
4 the foregoing stipulations. Both parties stipulate and agree not to
5 move for, or argue in support of, any departure from the Sentencing
6 Guidelines, or any deviance or variance from the Sentencing
7 Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct.
8 738 (2005), except: (1) pursuant to U.S.S.G. § 5K1.1; and (2) to
9 account for the defendant's health condition at the time of
10 sentencing. If either party breaches this provision, the other
11 party shall be relieved of all of its obligations under this Plea
12 and Cooperation Agreement.
13

14 VII.

15 WAIVERS

16
17 **A. Waiver of Constitutional Rights:** The defendant understands
18 that by pleading guilty he is waiving the following constitutional
19 rights: (a) to plead not guilty and to persist in that plea if
20 already made; (b) to be tried by a jury; (c) to be assisted at trial
21 by an attorney, who would be appointed if necessary; (d) to subpoena
22 witnesses to testify on his behalf; (e) to confront and cross-
23 examine witnesses against him; and (f) not to be compelled to
24 incriminate himself.
25

26 **B. Waiver of Appeal and Collateral Attack:** The defendant
27 understands that the law gives him a right to appeal his conviction
28

1 and sentence. He agrees as part of his plea, however, to give up
2 the right to appeal the conviction and the right to appeal any
3 aspect of the sentence imposed in this case so long as his sentence
4 is no longer than the top of the Sentencing Guidelines range
5 determined by the Court consistent with the stipulations set forth
6 above about the Sentencing Guidelines variables.
7

8 Regardless of the sentence he receives, the defendant also
9 gives up any right he may have to bring a post-appeal attack on his
10 conviction or his sentence. He specifically agrees not to file a
11 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or
12 sentence.
13

14 If the defendant ever attempts to vacate his plea, dismiss the
15 underlying charges, or reduce or set aside his sentence on any of
16 the counts to which he is pleading guilty, the government shall have
17 the right (1) to prosecute the defendant on any of the counts to
18 which he pleaded guilty; (2) to reinstate any counts that may be
19 dismissed pursuant to this Plea and Cooperation Agreement; and (3)
20 to file any new charges that would otherwise be barred by this Plea
21 and Cooperation Agreement. The decision to pursue any or all of
22 these options is solely in the discretion of the United States
23 Attorney's Office. By signing this Plea and Cooperation Agreement,
24 the defendant agrees to waive any objections, motions, and defenses
25 he might have to the government's decision. In particular, he
26 agrees not to raise any objections based on the passage of time with
27
28

1 respect to such counts including, but not limited to, any statutes
2 of limitation or any objections based on the Speedy Trial Act or the
3 Speedy Trial Clause of the Sixth Amendment.

4 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees
5 to waive all rights under the "Hyde Amendment," Section 617, P.L.
6 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
7 litigation expenses in connection with the investigation and
8 prosecution of all charges in the above-captioned matter and of any
9 related allegations.
10

11 **VIII.**

12 **ENTIRE PLEA AND COOPERATION AGREEMENT**

13 Other than this Plea and Cooperation Agreement, no agreement,
14 understanding, promise, or condition between the government and the
15 defendant exists, nor will such agreement, understanding, promise,
16 or condition exist unless it is committed to writing and signed by
17 the defendant, counsel for the defendant, and counsel for the United
18 States.
19

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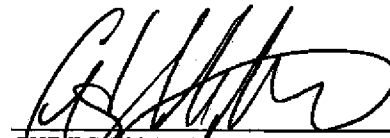
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IX.

APPROVALS AND SIGNATURES

A. **Defense Counsel:** I have read this Plea and Cooperation Agreement and have discussed it fully with my client. The Plea and Cooperation Agreement accurately and completely sets forth the entirety of the agreement, and I have no reason to believe that my client's plea of guilty should not be entered.

DATED: 12/9/08


CHRISTOPHER D. ADAMS
ALAN SILBER
DAVID W. DRATMAN
Attorneys for Defendant

B. **Defendant:** I have read this Plea and Cooperation Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea and Cooperation Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea and Cooperation Agreement. Finally, I am satisfied with the representation of my attorney in this case.

DATED: 12/9/08


RANDALL LEE RAHAL, Defendant

1
2 C. Attorney for United States: I accept and agree to this
3 Plea and Cooperation Agreement on behalf of the government.
4

5
6 DATED:

12/16/08

McGREGOR W. SCOTT
United States Attorney

7
8 By:

Benjamin Wagner

BENJAMIN B. WAGNER
SEAN C. FLYNN
Assistant U.S. Attorneys

9
10
11
12 DEBORAH A. GARZA
Acting Asst. Attorney General

13
14 By:

Benjamin Wagner for

15 BARBARA NELSON
16 RICHARD COHEN
17 LARA KROOP
18 Trial Attorneys
19 U.S. Department of Justice
20 Antitrust Division
21
22
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EXHIBIT "A"
Factual Basis for Plea

At trial, the government would prove the following facts beyond a reasonable doubt:

Since 1990, Randall Rahal ("Rahal") has served as the president of Intramark USA, Inc. ("Intramark"), a New Jersey based company that holds itself out as a wholesaler of food ingredients, including tomato products, and an importer of juice concentrates. Since at least 1993 until April 2008, Rahal was an agent of, a partner of, or was associated with SK Foods, L.P., a limited partnership with principal places of business in Monterey, California, and Williams, Ripon, and Lemoore, California, in the Eastern District of California. SK Foods, L.P., and its related corporate entities ("SK Foods") is a grower and processor of tomato products and other food products, for sale to food product manufacturers, food service distributors and marketers, and retail outlets. Rahal acted as a kind of advisor and supervisor for SK Foods, giving direction to and receiving periodic reports regarding various aspects of SK Foods' business from SK Foods employees. Since at least 2004 until April 2008, Rahal formally served on SK Foods' board of directors. SK Foods, including Rahal and other of its leaders, employees and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1961(4), that is a legal entity that was engaged in, and whose activities affected, interstate and foreign commerce.

Through Intramark, Rahal served as a broker for SK Foods. In that capacity, Rahal oversaw among other things the negotiation of contracts between SK Foods and many of its customers, such as Kraft Foods, Inc. ("Kraft"), ConAgra Foods, Inc. ("ConAgra"), B&G Foods, Inc. ("B&G") and Frito-Lay, Inc. ("Frito-Lay").

The Racketeering Conspiracy

Beginning no later than January 2004 and continuing until at least April 2008, there was an agreement between Rahal and other leaders, employees and associates of SK Foods to conduct SK Foods' business and affairs through a pattern of racketeering activity in the Eastern District of California and elsewhere. Specifically, Rahal, on behalf of SK Foods, routinely paid bribes to the purchasing agents of many of SK Foods' customers in order to ensure that those customers purchased tomato-based products, and other products, from SK Foods rather than from its competitors. In other instances, Rahal paid bribes to purchasing agents so that those agents would provide bidding and other proprietary information from SK Foods' competitors. Between January 2004 and April 2008, Rahal,

1 with the knowledge, and in some instances at the direction of
2 certain leaders of SK Foods, paid bribes in this fashion to certain
3 purchasing agents of, among others, Kraft, B&G and Frito-Lay, in
4 violation of applicable state bribery laws, and 18 U.S.C. §§ 1341,
5 1343 and 1346.

6 In addition to the bribery of its customers' purchasing agents,
7 between January 2004 and April 2008, SK Foods, with the assistance
8 of Rahal, constructed and transmitted to its customers fraudulent
9 financial and business information with the goal of inducing those
10 customers to do business with, and release funds to SK Foods. For
11 example, as part of a scheme to defraud ConAgra in June 2007, Rahal
12 arranged for SK Foods to fabricate and backdate an invoice between
13 SK Foods and Hatch Foods ("Hatch"), a ConAgra competitor (without
14 Hatch's knowledge), which reflected a false and inflated price paid
15 by Hatch for tomato product from SK Foods. The fraudulent invoice,
16 which falsely reflected that SK Foods was charging Hatch for canned
17 tomato product at a rate 39% higher than it actually was, was
18 transmitted to ConAgra in an effort to ensure ConAgra signed a
19 three-year contract for tomato paste with SK Foods, at a price of
20 approximately \$74,570,000.

21 Furthermore, between 2004 and April 2008, SK Foods, with the
22 assistance of Rahal, knowingly and routinely sold processed tomato
23 product to customers that did not meet customer specifications and
24 falsified both internal documentation, and customer-bound product
25 labels, quality control documents, bills of lading, and
26 "Certificates of Analysis" ("COA"), in order to make it appear as if
27 the processed tomato product shipped to customers was compliant with
28 contract requirements. SK Foods' falsification of documentation
involved various misstatements to its customers concerning both the
quality and content of the product. This practice of providing
customers with noncompliant and mis-marked product was done with
knowledge and at the direction of Rahal and other leaders of SK
Foods, and was in violation of 18 U.S.C. § 1341.

Rahal and his co-conspirators at SK Foods conspired, among
other things, to commit the following predicate offenses:

**Racketeering Act #1: Honest Services Mail Fraud and Commercial
Bribery with Respect to B&G Foods, Inc.**

B&G is a multinational manufacturer, seller and distributor of
various food products with a principal place of business in
Parsippany, New Jersey. B&G is a regular customer of SK Foods with
respect to tomato-based products, and other products. Between
January 2004 and April 2008, Bribe Recipient #1 served as a
purchasing manager at B&G, working out of the company's Parsippany,

1 New Jersey headquarters. In that capacity, Bribe Recipient #1 was
2 vested with the authority to negotiate and enter into contracts,
3 with the approval of his employer, for the purchase of certain food
4 products from processors, such as SK Foods. In performing these
5 functions, Bribe Recipient #1 owed a duty of honest services to B&G.

6 In May 2007, SK Foods and B&G entered into a "cost-plus"
7 contract whereby SK Foods agreed to sell B&G 13,000,000 pounds of
8 chile and jalapeno peppers at a price of \$0.22 per pound.
9 Subsequent to entering into the agreement, and at the direction of
10 another leader of SK Foods, Rahal and Bribe Recipient #1 agreed to
11 increase the price per pound that B&G would pay SK Foods under the
12 agreement. Rahal and another leader of SK Foods further agreed that
13 they would provide Bribe Recipient #1 with a fictitious
14 justification for the increased contract price, namely that SK Foods
15 was experiencing increased agricultural costs in connection with the
16 peppers, and that Bribe Recipient #1 would provide this
17 justification to his employers.

18 As a result of Rahal, the other leader of SK Foods, and Bribe
19 Recipient #1's actions, the contract price for the sale of the first
20 6,500,000 pounds of peppers to B&G was increased to \$0.25 per pound.
21 The contract price for the remaining 6,500,000 pounds of peppers was
22 increased to \$0.285 per pound.

23 In exchange for his efforts in helping to secure the pepper
24 contract between SK Foods and B&G, as well as its price, Rahal
25 promised Bribe Recipient #1 a personal bribe payment in the
26 approximate amount of \$65,000 - equating to \$.005 per pound on the
27 entire contract. On July 12, 2007, in an intercepted wire
28 communication, Rahal confirmed the amount of the bribe payment with
Bribe Recipient #1.

On or about December 12, 2007, Rahal directed a check in the
amount of \$9,689.80 from Intramark's Sun National Bank account
number XXXXXX5624 to Bribe Recipient #1's wife, via United States
mail, in partial satisfaction of the agreed to bribe payment.
Between January 2004 and April 2008, Bribe Recipient #1 received at
least \$14,698.80 in bribe payments from Rahal. One such additional
bribe payment occurred on or about July 11, 2007. On that date,
Rahal directed a check in the amount of \$2,000 from Intramark's Sun
National Bank account number XXXXXX5624 to Bribe Recipient #1's
wife, via United States mail. Assisted by Rahal, Bribe Recipient
#1's actions violated a duty of fidelity owed to B&G, which is
outlined in Section 2 of B&G Foods, Inc.'s Code of Business Conduct
and Ethics. Such conduct violated 18 U.S.C. §§ 1341 and 1346, and
N.J. STAT. ANN. § 2C:21-10.

1 Racketeering Act #2: Honest Services Mail Fraud with Respect to
2 Kraft Foods

3 Kraft is a multinational food company with a principal place of
4 business in Northfield, Illinois. Kraft is a regular customer of SK
5 Foods with respect to tomato paste and other tomato-based products.
6 From at least January 2004 until April 2008, Bribe Recipient #2
7 served as a purchasing manager for Kraft, working out of the
8 company's Northfield, Illinois headquarters. In that capacity,
9 Bribe Recipient #2 was vested with the authority to negotiate and
enter into contracts, with the approval of his employer, for the
purchase of certain food products from various processors, such as
SK Foods. In performing these functions, Bribe Recipient #2 owed a
duty of honest services to Kraft.

10 In the normal course, Kraft and Bribe Recipient #2 received
11 bids for the sale of tomato-based products from processors to Kraft
12 by way of what was intended to be a secret and competitive bidding
13 process. As part of a scheme to defraud Kraft of its right to Bribe
14 Recipient #2's honest services and to secure contracts with Kraft
for the sale of tomato products at elevated prices, beginning in
2004 Rahal began making bribe payments to Bribe Recipient #2 on
behalf of SK Foods.

15 As part of the scheme to defraud Kraft, between January 2004
16 and April 2008, Rahal paid Bribe Recipient #2 approximately \$158,000
17 in bribes on behalf of SK Foods in order secure Kraft's business,
18 and to induce Bribe Recipient #2 to provide SK Foods with certain
19 proprietary information of SK Foods' competitors. These bribe
20 payments were made with the knowledge and encouragement of other
21 leaders and employees of SK Foods. For example, in a recorded
22 telephone conversation on April 14, 2008, another leader of SK Foods
and Rahal discussed how Rahal had just made personal bribe payments
to Bribe Recipient #2 totaling \$24,000. Later in that same
conversation, the other leader of SK Foods expressed concern to
Rahal that SK Foods was not getting a maximum value for its bribes
to Bribe Recipient #2.

23 One such payment occurred on or about January 19, 2006. On
24 that date, Rahal directed a check in the amount of \$10,000.00 from
25 Intramark's Sun National Bank account number XXXXXX5624 to Bribe
26 Recipient #2 in Wheeling, Illinois, via United States mail. On July
27 25, 2007, Rahal subsequently directed a second check in the amount
of \$17,252.78 from Intramark's Sun National Bank account number
XXXXXX5624 to Bribe Recipient #2, via United States mail.

28 As a result of Rahal's bribe payments to Bribe Recipient #2,

1 between 2004 and 2008 SK Foods was able to secure contracts for the
2 sale of approximately 230 million pounds of tomato product to Kraft
at elevated prices, causing a substantial loss to Kraft Foods.

3 Rahal and Bribe Recipient #2's actions were in direct
4 contravention of the conflict of interest policies set forth in
5 Kraft Foods Code of Conduct for Compliance and Integrity, and were
6 intended to, and did deprive Kraft of its right to Bribe Recipient
#2's honest services. Such conduct violated 18 U.S.C. §§ 1341 and
1346.

7 **Racketeering Act #3: Honest Services Mail Fraud with Respect to**
8 **Frito-Lay**

9 Frito-Lay is a multinational food company with a principal
10 place of business in Plano, Texas. Frito-Lay is a regular customer
11 of SK Foods with respect to tomato-based products, and various other
12 food products. From at least January 2004 until April 2008, Bribe
13 Recipient #3 served as a purchasing manager for Frito-Lay, working
14 out of the company's Plano, Texas headquarters. In that capacity,
15 Bribe Recipient #3 was vested with the authority to negotiate and
enter into contracts, with the approval of his employer, for the
purchase of certain food products from various processors, such as
SK Foods. In performing these functions, Bribe Recipient #3 owed a
duty of honest services to Frito-Lay.

16 In the normal course, Frito-Lay and Bribe Recipient #3 received
17 bids for the sale of tomato-based products from processors to Frito-
18 Lay by way of what was intended to be a competitive bidding process.
19 As part of a scheme to defraud Frito-Lay of its right to Bribe
20 Recipient #3's honest services and to secure contracts with Frito-
Lay for the sale of tomato products at elevated prices, beginning in
1998, Rahal began making bribe payments to Bribe Recipient #3 on
behalf of SK Foods.

21 As part of the scheme to defraud Frito-Lay, between January
22 2004 and April 2008, Rahal with the knowledge and encouragement of
23 other leaders and employees of SK Foods, paid approximately \$81,000
24 in bribes on behalf of SK Foods in order secure Frito-Lay's
25 business. One such payment occurred on or about September 7, 2006.
26 On that date Rahal directed a check in the amount of \$4,000.00 from
27 Intramark's Sun National Bank account number XXXXXX5624 to Bribe
Recipient #3 in Dallas, Texas, via United States mail. On March 26,
2008, Rahal subsequently directed a check in the amount of \$5,722.94
from Intramark's Sun National Bank account number XXXXXX5624 to
Bribe Recipient #3 in Dallas, Texas, via United States mail.

28 As a result of Rahal's bribe payments to Bribe Recipient #3,

1 between 2004 and 2008, SK Foods was able to secure contracts for the
2 sale of tomato and other food products to Frito-Lay at elevated
prices, causing a substantial loss to Frito-Lay.

3 Rahal and Bribe Recipient #3's actions were in direct
4 contravention of the conflict of interest policies set forth in
5 Frito-Lay's Code of Conduct, and were intended to, and did deprive
Frito-Lay of its right to Bribe Recipient #3's honest services.
6 Such conduct violated 18 U.S.C. §§ 1341 and 1346, and TEX. PENAL CODE
§ 32.43.

7 **Racketeering Act #4: Mail Fraud (Mislabelled Product) with Respect**
8 **to Kraft Foods**

9 The market price of processed tomato product is based in large
10 part on the percentage of Natural Tomato Soluble Solids (NTSS) that
the product contains. In the normal course, processed tomato
11 product with a higher concentration of tomato solids costs more on
the open market than tomato product with a lesser concentration.
12 Customers frequently specify an NTSS concentration in their
contracts with manufacturers such as SK Foods. Customers will also
13 often specify acceptable levels of other tomato product
characteristics such as the product's pH, mold content, acidity and
14 viscosity.

15 During 2007, SK Foods experienced a period during which it was
16 unable to produce an adequate supply of processed tomato paste
containing 31% NTSS (Natural Tomato Soluble Solids) in order to meet
17 its contractual obligations to certain customers, including Kraft.
In an attempt to alleviate the shortage, a leader of SK Foods
18 contacted a competing manufacturer of processed tomato products in
February 2007, and arranged to purchase approximately 3,400,000
19 pounds of processed tomato product containing lower NTSS
20 concentrations of 26% and 28%.

21 As the product purchased from the competitor did not meet the
specifications contained in certain of SK Foods' existing contracts,
22 in order to conceal the inferior quality of the product, and as part
of a scheme to defraud Kraft, Rahal and another leader of SK Foods
23 directed certain SK Foods employees to falsify both internal and
customer-bound documentation so that it incorrectly reflected the
24 product as containing 31% NTSS tomato paste. The same documentation
was also altered so that it reflected a significantly lower mold
25 content than what the product actually contained. The processed
tomato product and the accompanying altered documentation were
26 ultimately shipped, during the spring of 2007, via interstate
27 carrier from SK Foods' facilities in the Eastern District of
28 California to Kraft's facilities in other states. One such shipment

1 occurred on or about April 12, 2007. On that date, SK Foods shipped
2 tomato product, accompanied by among other things, a bill of lading,
3 which falsely identified the shipment as containing 31% NTSS tomato
4 paste, from its facilities in the Eastern District of California to
5 Kraft in Darien, Wisconsin. A copy of the falsified bill of lading
6 was also transmitted on or about April 12, 2007, via United States
7 mail, to a separate Kraft address in San Antonio, Texas. Copies of
8 the altered documentation were provided to Rahal and Intramark, via
9 facsimile, in the District of New Jersey. At the time it was
10 shipped, Rahal and executives at SK Foods knew the documentation was
11 false with respect to the processed tomato product's NTSS level, a
12 fact that was material to Kraft's decision to pay SK Foods for the
13 product.

14 As a result of SK Foods' scheme to defraud, Kraft unknowingly
15 paid approximately 11% and 12% above market rate for the 28% and 26%
16 NTSS processed tomato product, respectively, causing a loss to Kraft
17 in the approximate amount of \$136,020.

18 Money Laundering

19 On or about April 16, 2007, Rahal transmitted check number
20 7760 in the amount of \$12,896.00 from Intramark's Sun National Bank
21 account number XXXXXX5624 to Bribe Recipient #2 in Wheeling,
22 Illinois, which was received, via United States mail. As Rahal well
23 knew at the time of its transmission, the check represented the
24 proceeds of acts otherwise indictable under Title 18, United States
25 Code, Sections 1341 and 1346, specifically Rahal's and SK Foods'
26 scheme to defraud Kraft of its right to Bribe Recipient #2's honest
27 services with respect to the awarding of contracts for the purchase
28 of tomato-based products. The issuance of the check on Intramark's
Sun National Bank account constituted a violation of 18 U.S.C. §
1957.

20 Violations of the Sherman Act

21 Beginning at least as early as February 2006 and continuing
22 until approximately April 2008, Rahal participated in and aided and
23 abetted a conspiracy to fix prices, allocate contracts, and rig bids
24 for processed tomato products, including tomato paste and diced
25 tomatoes. The primary purpose of this conspiracy was to eliminate
26 competition and fix the price of processed tomato products sold in
27 the United States. During the relevant time, Rahal was the owner
28 and president of Intramark USA Inc., a broker selling processed
tomato products for itself and on behalf of others. Rahal and his
co-conspirators reached agreement to fix the prices to be charged to
customers in the United States for processed tomato products in the
Eastern District of California and elsewhere. To carry out their

1 agreements, Rahal and his co-conspirators submitted artificially
2 inflated bids and price quotations. Rahal also acted to assist in
3 enforcing the agreements, by obtaining and distributing information
4 about prices offered by co-conspirators and competitors to the
5 subject customers. In at least one instance, a co-conspirator
6 withdrew a quote that did not comply with agreed-to prices after
7 being confronted with information obtained by Rahal from the
8 customer.

9 During the relevant period, processed tomato products sold by
10 one or more of the conspirators, as well as payment for such
11 products, traveled in interstate commerce. The business activities
12 of the defendant and co-conspirators were within the flow of, and
13 substantially affected, interstate trade and commerce.
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FILED

JAN 27 2009

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ROBERT WATSON,)
)
Defendant.)

No. CR S 09-0035-LKK

PLEA AGREEMENT

I.

INTRODUCTION

A. Scope of Agreement: The Information to be filed in this case charges the defendant, Robert Watson ("Watson"), with two counts of honest services mail fraud in violation of 18 U.S.C. §§ 1341 and 1346. This document contains the complete plea agreement between the United States Attorney's Office for the Eastern District of California (the "government") and the defendant regarding this case. This plea agreement is limited to the United States Attorney's Office for the Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

B. Court Not a Party: The Court is not a party to this plea agreement. Sentencing is a matter solely within the discretion of the Court, the Court is under no obligation to accept any recommendations made by the government, and the Court may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this plea agreement. If the Court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations under this plea agreement. The defendant understands that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will receive.

II.

DEFENDANT'S OBLIGATIONS

A. Waiver of Indictment and Venue: The defendant will waive indictment by grand jury, waive venue in the Northern District of Illinois, and agree to proceed in the Eastern District of California. He consents to the filing of a two-count Information, substantially in the form attached hereto as Exhibit B, charging him with honest services mail fraud (2 counts) in violation of 18 U.S.C. §§ 1341 and 1346.

B. Guilty Plea: The defendant will plead guilty to the Information charging him with two counts of honest services mail fraud. The defendant agrees that he is in fact guilty of those charges and that the facts set forth in the Factual Basis attached hereto as Exhibit A are true and accurate.

C. Restitution: The Mandatory Victim Restitution Act requires

1 during the sentencing proceeding.

2 IV.

3 ELEMENTS OF THE OFFENSE

4 With respect to Counts One and Two of the Information to be
5 filed in this matter, which charge the defendant with honest
6 services mail fraud in violation of 18 U.S.C. §§ 1341 and 1346, at
7 trial the government would have to prove beyond a reasonable doubt
8 the following elements:

9 First, that the defendant knowingly made up a material scheme
10 or plan to deprive his employer Kraft Foods, Inc. of its intangible
11 right to the defendant's honest services;

12 Second, the defendant acted with the intent to deprive Kraft
13 Foods, Inc. of its intangible right to the defendant's honest
14 services; and

15 Third, the defendant used, or caused to someone to use, the
16 mails to carry out or to attempt to carry out the scheme or plan.

17 V.

18 MAXIMUM SENTENCE

19 A. Maximum Penalty: With respect to Counts One and Two of the
20 Information to be filed in this matter charging violations of 18
21 U.S.C. §§ 1341 and 1346, the maximum sentence that the Court can
22 impose is twenty years of incarceration, a fine of \$250,000, a
23 three-year period of supervised release, and a special assessment of
24 \$100 on each count.

25 B. Violations of Supervised Release: The defendant
26 understands that if he violates a condition of supervised release at
27 any time during the term of supervised release, the Court may revoke
28 the term of supervised release and require the defendant to serve up

1 to three additional years of imprisonment.

2 VI.

3 SENTENCING DETERMINATION

4 A. Statutory Authority: The defendant understands that the
5 Court must consult the Federal Sentencing Guidelines (as promulgated
6 by the Sentencing Commission pursuant to the Sentencing Reform Act
7 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as
8 modified by United States v. Booker and United States v. Fanfan,
9 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account
10 when determining a final sentence. The defendant understands that
11 the Court will determine a non-binding and advisory guideline
12 sentencing range for this case pursuant to the Sentencing
13 Guidelines. The defendant further understands that the Court will
14 consider whether there is a basis for departure from the guideline
15 sentencing range (either above or below the guideline sentencing
16 range) because there exists an aggravating or mitigating
17 circumstance of a kind, or to a degree, not adequately taken into
18 consideration by the Sentencing Commission in formulating the
19 Guidelines. The defendant further understands that the Court, after
20 consultation and consideration of the Sentencing Guidelines, must
21 impose a sentence that is reasonable in light of the factors set
22 forth in 18 U.S.C. § 3553(a).

23 B. Stipulations Affecting Guidelines Calculations: The
24 government and the defendant agree that there is no material dispute
25 as to the following sentencing guidelines variables and therefore
26 stipulate and agree to the following:

27 1. Base Offense Level: The defendant's base offense
28 level is eight pursuant to U.S.S.G. § 2B4.1.

1 **2. Specific Offense Characteristics:** Pursuant to
2 U.S.S.G. §§ 2B4.1(b)(1) and 2B1.1(b)(1), the parties agree that at
3 an evidentiary hearing the government is currently in a position to
4 prove that the amount of loss attributable to the honest services
5 mail fraud committed by the defendant, and relevant conduct, is
6 greater than \$120,000, but less than \$200,000. Consequently, the
7 base offense level is increased by ten.

8 **3. Abuse of Trust:** The parties stipulate and agree that
9 in committing the conduct alleged in Counts One and Two of the
10 Information to be filed in this matter defendant abused a position
11 of public or private trust. Consequently, there is a two level
12 enhancement pursuant to U.S.S.G. § 3B1.3.

13 **4. Acceptance of Responsibility:** See paragraph III.B
14 above.

15 **5. Total Offense Level:** Pursuant to the foregoing
16 stipulations, and assuming the defendant accepts responsibility for
17 his conduct under U.S.S.G. § 3E1.1, the defendant's total adjusted
18 offense level is seventeen.

19 **6. Criminal History:** The parties agree that the
20 defendant's criminal history is to be determined by United States
21 Probation.

22 **7. Departures or Other Enhancements or Reductions:** The
23 parties stipulate and agree that they will not seek or argue in
24 support of any other specific offense characteristics, Chapter Three
25 adjustments or cross-references, other than those contemplated in
26 the foregoing stipulations. Both parties stipulate and agree not to
27 move for, or argue in support of, any departure from the Sentencing
28 Guidelines, or any deviance or variance from the Sentencing

1 Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct.
2 738 (2005). If either party breaches this provision, the other
3 party shall be relieved of all of its obligations under this plea
4 agreement.

5 VII.

6 WAIVERS

7 A. **Waiver of Constitutional Rights:** The defendant understands
8 that by pleading guilty he is waiving the following constitutional
9 rights: (a) to plead not guilty and to persist in that plea if
10 already made; (b) to be tried by a jury; (c) to be assisted at trial
11 by an attorney, who would be appointed if necessary; (d) to subpoena
12 witnesses to testify on his behalf; (e) to confront and cross-
13 examine witnesses against him; and (f) not to be compelled to
14 incriminate himself.

15 B. **Waiver of Appeal and Collateral Attack:** The defendant
16 understands that the law gives him a right to appeal his conviction
17 and sentence. He agrees as part of his plea, however, to give up
18 the right to appeal the conviction and the right to appeal any
19 aspect of the sentence imposed in this case so long as his sentence
20 is no longer than the top of the Sentencing Guidelines range
21 determined by the Court consistent with the stipulations set forth
22 above about the Sentencing Guidelines variables.

23 Regardless of the sentence he receives, the defendant also
24 gives up any right he may have to bring a post-appeal attack on his
25 conviction or his sentence. He specifically agrees not to file a
26 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or
27 sentence.

28 If the defendant ever attempts to vacate his plea, dismiss the

1 underlying charges, or reduce or set aside his sentence on any of
2 the counts to which he is pleading guilty, the government shall have
3 the right (1) to prosecute the defendant on any of the counts to
4 which he pleaded guilty; (2) to reinstate any counts that may be
5 dismissed pursuant to this plea agreement; and (3) to file any new
6 charges that would otherwise be barred by this plea agreement. The
7 decision to pursue any or all of these options is solely in the
8 discretion of the United States Attorney's Office. By signing this
9 plea agreement, the defendant agrees to waive any objections,
10 motions, and defenses he might have to the government's decision.
11 In particular, he agrees not to raise any objections based on the
12 passage of time with respect to such counts including, but not
13 limited to, any statutes of limitation or any objections based on
14 the Speedy Trial Act or the Speedy Trial Clause of the Sixth
15 Amendment.

16 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees
17 to waive all rights under the "Hyde Amendment," Section 617, P.L.
18 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
19 litigation expenses in connection with the investigation and
20 prosecution of all charges in the above-captioned matter and of any
21 related allegations.

22 **VIII.**

23 **ENTIRE PLEA AGREEMENT**

24 Other than this plea agreement, no agreement, understanding,
25 promise, or condition between the government and the defendant
26 exists, nor will such agreement, understanding, promise, or
27 condition exist unless it is committed to writing and signed by the
28 defendant, counsel for the defendant, and counsel for the United

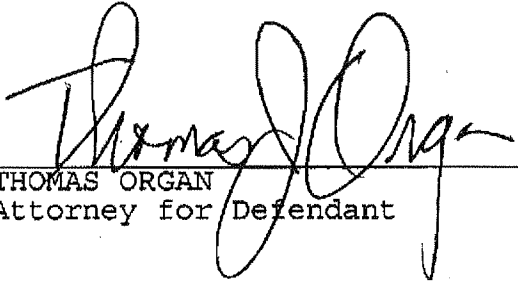
1 States.

2 IX.

3 APPROVALS AND SIGNATURES

4 A. Defense Counsel: I have read this plea agreement and have
5 discussed it fully with my client. The plea agreement accurately
6 and completely sets forth the entirety of the agreement. I concur
7 in my client's decision to plead guilty as set forth in this plea
8 agreement.

9
10 DATED: 1-27-09


THOMAS ORGAN
Attorney for Defendant

13
14 B. Defendant: I have read this plea agreement and carefully
15 reviewed every part of it with my attorney. I understand it, and I
16 voluntarily agree to it. Further, I have consulted with my attorney
17 and fully understand my rights with respect to the provisions of the
18 Sentencing Guidelines that may apply to my case. No other promises
19 or inducements have been made to me, other than those contained in
20 this plea agreement. In addition, no one has threatened or forced
21 me in any way to enter into this plea agreement. Finally, I am
22 satisfied with the representation of my attorney in this case.

23
24 DATED: 1-27-09


ROBERT WATSON, Defendant

25 / / / /

26 / / / /

27 / / / /

1 C. Attorney for United States: I accept and agree to this
2 Plea Agreement on behalf of the government.

3
4 DATED: January 27, 2009

LAWRENCE G. BROWN
Acting United States Attorney

5
6
7 By: Sean C. Flynn
BENJAMIN B. WAGNER
SEAN C. FLYNN
Assistant U.S. Attorneys

EXHIBIT "A"
Factual Basis for Plea

At trial, the government would prove the following facts beyond a reasonable doubt:

From at least January 2004 until April 2008, defendant Robert Watson ("Watson") served as Purchasing Manager for Kraft Foods, Inc. ("Kraft"), a multinational food company with a principal place of business and headquarters in Northfield, Illinois. In that capacity, Watson was vested with authority to negotiate and enter into contracts, with the approval of his employer, for the purchase of tomato-based products and other food products from various processors. In the normal course, Kraft Foods and Watson received bids for the sale of tomato-based products from processors to Kraft by way of what was intended to be a secret and competitive bidding process. In performing these functions, Watson owed Kraft Foods a duty of honest services.

One company which routinely sold processed tomato products and other food products to Kraft was SK Foods, L.P., a limited partnership with principal places of business in Monterey, California, and in Williams, Ripon and Lemoore, California, in the Eastern District of California. SK Foods, L.P. and its related corporate entities ("SK Foods") is a grower and processor of tomato products and other food products, for sale to food product manufacturers, food service distributors and marketers, and retail outlets. In negotiating and entering into contracts between Kraft and SK Foods, Watson routinely dealt with Randall Rahal, a supervisor and Director of SK Foods, who also served as an SK Foods sales broker through his New Jersey-based food service company Intramark USA, Inc. ("Intramark").

As part of a scheme to defraud Kraft of its right to Watson's honest services, beginning in 2004 Watson began receiving personal bribe payments from Rahal, on behalf of SK Foods. Between January 2004 and April 2008, Rahal paid Watson approximately \$158,000 in bribes on behalf of SK Foods. In return for the bribes, Watson agreed to, and did, ensure that Kraft Foods purchased processed tomato products and other products from SK Foods rather than from certain of SK Foods' competitors. In addition, in return for the bribes, Watson provided SK Foods with information that allowed SK Foods to sell processed tomato products to Kraft at inflated prices. Rahal's bribe payments to Watson were made with the knowledge and encouragement of other leaders and employees at SK Foods.

One such payment occurred on or about January 19, 2006. On that date, Watson accepted from Rahal a check in the amount of \$10,000, which was drawn on Intramark's Sun National Bank account number XXXXXX5624. Watson received the check in Wheeling, Illinois, via United States mail. On July 25, 2007, Watson subsequently accepted from Rahal a second check in the amount of \$17,252.78, which was drawn on Intramark's Sun National Bank account number XXXXXX5624. Watson received the check in Wheeling, Illinois, via United States mail.

1 In return for Rahal and SK Foods' personal bribery payments,
2 between 2004 and 2008 Watson ensured that SK Foods secured contracts
3 with Kraft for the sale of approximately 230 million pounds of
tomato product at elevated prices, causing a substantial loss to
Kraft.

4 Watson, Rahal and SK Foods' actions were in direct
5 contravention of the conflict of interest policies set forth in the
6 Kraft Foods Code of Conduct for Compliance and Integrity, and were
intended to, and did deprive Kraft of its right to Watson's honest
services. Such conduct violated 18 U.S.C. §§ 1341 and 1346, and 720
ILL. COMP. STAT. 5/29A-2 (2008).

1 LAWRENCE BROWN
Acting United States Attorney
2 BENJAMIN B. WAGNER
SEAN C. FLYNN
3 Assistant U.S. Attorneys
501 "I" Street, Suite 10-100
4 Sacramento, California 95814
Telephone: (916) 554-2700
5
6
7

FILED

FEB 18 2009

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)
11)
12 Plaintiff,)
13 v.)
14 JENNIFER LOU DAHLMAN,)
15 Defendant.)

No. Cr. S 09-0062-LKK

PLEA AND COOPERATION AGREEMENT

16
17 I.

18 INTRODUCTION

19 A. **Scope of Agreement:** The Information to be filed in this
20 case charges the defendant, Jennifer Lou Dahlman ("Dahlman"), with
21 causing the introduction or delivery for introduction of adulterated
22 and misbranded food into interstate commerce with the intent to
23 defraud and mislead in violation of 21 U.S.C. §§ 331(a) and
24 333(a)(2). This document contains the complete plea and cooperation
25 agreement between the United States Attorney's Office for the
26 Eastern District of California and the United States Department of
27 Justice, Antitrust Division (the "government"), and the defendant
28 regarding this case. This plea and cooperation agreement is limited

1 to the United States Attorney's Office for the Eastern District of
2 California and the United States Department of Justice, Antitrust
3 Division, and cannot bind any other federal, state, or local
4 prosecuting, administrative, or regulatory authorities.

5 **B. Court Not a Party:** The Court is not a party to this plea
6 and cooperation agreement. Sentencing is a matter solely within the
7 discretion of the Court, the Court is under no obligation to accept
8 any recommendations made by the government, and the Court may in its
9 discretion impose any sentence it deems appropriate up to and
10 including the statutory maximum stated in this plea and cooperation
11 agreement. If the Court should impose any sentence up to the
12 maximum established by the statute, the defendant cannot, for that
13 reason alone, withdraw her guilty plea, and she will remain bound to
14 fulfill all of the obligations under this plea and cooperation
15 agreement. The defendant understands that neither the prosecutor,
16 defense counsel, nor the Court can make a binding prediction or
17 promise regarding the sentence she will receive.

18 **II.**

19 **DEFENDANT'S OBLIGATIONS**

20 **A. Waiver of Indictment and Guilty Plea:** The defendant will
21 waive indictment by grand jury, and plead guilty to a one-count
22 Information, substantially in the form attached hereto as Exhibit B,
23 charging her with causing the introduction or delivery for
24 introduction of adulterated and misbranded food into interstate
25 commerce with the intent to defraud and mislead in violation of 21
26 U.S.C. §§ 331(a) and 333(a)(2). The defendant agrees that she is in
27 fact guilty of that charge and that the facts set forth in the
28 Factual Basis attached hereto as Exhibit A are true and accurate.

1 **B. Restitution:** The Mandatory Victim Restitution Act requires
2 the Court to order restitution to the victims of certain offenses.
3 The parties recognize that United States Probation will make a
4 determination regarding the defendant's restitution obligation in
5 this matter, however, the parties reserve the right to present
6 evidence and arguments at the time of sentencing concerning the
7 applicability or amount of any court ordered restitution obligation.
8 If such restitution is ordered, payment should be by cashier's or
9 certified check made payable to the Clerk of the Court. The
10 defendant understands that this plea and cooperation agreement is
11 voidable by the government if she fails to pay the restitution as
12 ordered by the Court. Defendant further agrees that she will not
13 seek to discharge any restitution obligation or any part of such
14 obligation in any bankruptcy proceeding.

15 **C. Special Assessment:** The defendant agrees to pay a special
16 assessment of \$100 at the time of sentencing by delivering a check
17 or money order payable to the United States District Court to the
18 United States Probation Office immediately before the sentencing
19 hearing.

20 **D. Agreement to Cooperate:** The defendant agrees to cooperate
21 fully with the government and any other federal, state, or local law
22 enforcement agency, as directed by the government. As used in this
23 plea and cooperation agreement, "cooperation" requires the
24 defendant: (1) to respond truthfully and completely to all
25 questions, whether in interviews, in correspondence, telephone
26 conversations, before a grand jury, or at any trial or other court
27 proceeding; (2) to attend all meetings, grand jury sessions, trials,
28 and other proceedings at which the defendant's presence is requested

1 by the government or compelled by subpoena or court order; (3) to
2 produce voluntarily any and all documents, records, or other
3 tangible evidence requested by the government; (4) not to
4 participate in any criminal activity while cooperating with the
5 government; and (5) to disclose to the government the existence and
6 status of all money, property, or assets, of any kind, derived from
7 or acquired as a result of, or used to facilitate the commission of,
8 the defendant's illegal activities or the illegal activities of any
9 conspirators.

10 If the defendant commits any crimes or if any of the
11 defendant's statements or testimony prove to be knowingly false,
12 misleading, or materially incomplete, or if the defendant otherwise
13 violates this plea and cooperation agreement in any way, the
14 government will no longer be bound by its representations to the
15 defendant concerning the limits on criminal prosecution and
16 sentencing as set forth herein. The determination whether the
17 defendant has violated the plea and cooperation agreement will be
18 under a preponderance of the evidence standard. If the defendant
19 violates the plea and cooperation agreement, she shall thereafter be
20 subject to prosecution for any federal criminal violation of which
21 the government has knowledge, including but not limited to perjury,
22 false statements, and obstruction of justice. Because disclosures
23 pursuant to this plea and cooperation agreement will constitute a
24 waiver of the Fifth Amendment privilege against compulsory self-
25 incrimination, any such prosecution may be premised on statements
26 and/or information provided by the defendant. Moreover, any
27 prosecutions that are not time-barred by the applicable statute of
28 limitations as of the date of this plea and cooperation agreement

1 may be commenced in accordance with this paragraph, notwithstanding
2 the expiration of the statute of limitations between the signing of
3 this plea and cooperation agreement and the commencement of any such
4 prosecutions. The defendant agrees to waive all defenses based on
5 the statute of limitations or delay of prosecution with respect to
6 any prosecutions that are not time-barred as of the date of this
7 plea and cooperation agreement.

8 If it is determined that the defendant has violated any
9 provision of this plea and cooperation agreement or if the defendant
10 successfully moves to withdraw her plea: (1) all statements made by
11 the defendant to the government or other designated law enforcement
12 agents, or any testimony given by the defendant before a grand jury
13 or other tribunal, whether before or after this plea and cooperation
14 agreement, shall be admissible in evidence in any criminal, civil,
15 or administrative proceedings hereafter brought against the
16 defendant; and (2) the defendant shall assert no claim under the
17 United States Constitution, any statute, Rule 11(f) of the Federal
18 Rules of Criminal Procedure, Rule 410 of the Federal Rules of
19 Evidence, or any other federal rule, that statements made by the
20 defendant before or after this plea and cooperation agreement, or
21 any leads derived therefrom, should be suppressed. By signing this
22 plea and cooperation agreement, the defendant waives any and all
23 rights in the foregoing respects.

24 **III.**

25 **THE GOVERNMENT'S OBLIGATIONS**

26 **A. Incarceration Range:** The government will recommend that
27 the defendant be sentenced to the bottom of the applicable guideline
28 range for her offense as determined by the United States Probation

1 Office.

2 **B. Acceptance of Responsibility:** If the United States
3 Probation Office determines that a two level reduction in
4 defendant's offense level for her full and clear demonstration of
5 acceptance of responsibility is appropriate under U.S.S.G. § 3E1.1,
6 the government will not oppose such a reduction and will so move
7 under § 3E1.1(b), so long as the defendant pleads guilty, meets with
8 and assists the probation officer in the preparation of the pre-
9 sentence report, is truthful and candid with the probation officer
10 and the Court, and does not otherwise engage in conduct that
11 constitutes obstruction of justice within the meaning of U.S.S.G. §
12 3C1.1, either in the preparation of the pre-sentence report or
13 during the sentencing proceeding.

14 **C. Reduction of Sentence for Cooperation:** The government
15 agrees to recommend at the time of sentencing that the defendant's
16 sentence of imprisonment be reduced to reflect her substantial
17 assistance to the government in the investigation and prosecution of
18 others, pursuant to U.S.S.G. § 5K1.1. The defendant understands
19 that she must comply with paragraph II(D) of this plea and
20 cooperation agreement. The defendant understands that the
21 government's recommended reduction in her sentence will depend upon
22 the level of assistance the government determines that the defendant
23 has provided. The defendant further understands that a motion
24 pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is not
25 binding on the Court.

26 If the government determines that the defendant has provided
27 further cooperation within one year following sentencing, the
28 government may move for a further reduction of her sentence pursuant

to Rule 35 of the Federal Rules of Criminal Procedure.

D. **Limitation on Use of Information for Sentencing:** Other than as set forth above, the government agrees that any incriminating information provided by the defendant during her cooperation will not be used in determining the applicable guideline range in his case, pursuant to U.S.S.G. § 1B1.8.

E. Fine: The government agrees to recommend that the criminal fine imposed on the defendant, if any, be no higher than the bottom of the applicable fine range, given the defendant's offense level and sentencing range.

IV.

ELEMENTS OF THE OFFENSE

With respect to the sole count of the Information to be filed in this matter, which charges the defendant with causing the introduction or delivery for introduction of adulterated and misbranded food into interstate commerce with the intent to defraud and mislead in violation of 21 U.S.C. §§ 331(a) and 333(a)(2), at trial the government would have to prove beyond a reasonable doubt the following elements:

First, the defendant caused food to be introduced or delivered for introduction into interstate commerce;

Second, the food was adulterated or misbranded; and

Third, the defendant acted with the intent to defraud or mislead.

V.

MAXIMUM SENTENCE

A. Maximum Penalty: With respect to the sole count of the Information to be filed in this matter, which charges the defendant

with causing the introduction or delivery for introduction of adulterated and misbranded food into interstate commerce with the intent to defraud and mislead in violation of 21 U.S.C. §§ 331(a) and 333(a)(2), the maximum sentence that the Court can impose is three years incarceration, a fine of \$10,000, a one-year period of supervised release, and a special assessment of \$100.

B. Violations of Supervised Release: The defendant understands that if she violates a condition of supervised release at any time during the term of supervised release, the Court may revoke the term of supervised release and require the defendant to serve up to one additional year of imprisonment.

VI.

SENTENCING DETERMINATION

A. **Statutory Authority:** The defendant understands that the Court must consult the Federal Sentencing Guidelines (as promulgated by the Sentencing Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United States v. Booker and United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account when determining a final sentence. The defendant understands that the Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing Guidelines. The defendant further understands that the Court will consider whether there is a basis for departure from the guideline sentencing range (either above or below the guideline sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the

1 Guidelines. The defendant further understands that the Court, after
2 consultation and consideration of the Sentencing Guidelines, must
3 impose a sentence that is reasonable in light of the factors set
4 forth in 18 U.S.C. § 3553(a).

5 **B. Stipulations Affecting Guidelines Calculations:** The
6 government and the defendant agree that there is no material dispute
7 as to the following sentencing guidelines variables and therefore
8 stipulate and agree to the following:

9 **1. Applicable Guidelines Section:** With respect to the
10 charge of causing the introduction or delivery for introduction of
11 adulterated and misbranded food into interstate commerce with the
12 intent to defraud and mislead, the applicable guidelines section is
13 U.S.S.G. § 2N2.1. Because the defendant's causing the introduction
14 or delivery for introduction of adulterated and misbranded food into
15 interstate commerce was intended to defraud others, however, §
16 2N2.1(c)(1) requires the application of U.S.S.G. § 2B1.1 to the
17 offense conduct.

18 **2. Base Offense Level:** Pursuant to both U.S.S.G. §§
19 2N2.1(a) and § 2B1.1, the defendant's base offense level is 6.

20 **3. Specific Offense Characteristic:** Pursuant to U.S.S.G.
21 § 2B1.1(b)(1)(E), the parties agree that at an evidentiary hearing
22 the government is currently in a position to prove, from evidence
23 independent of that provided by the defendant, that the amount of
24 loss attributable to the defendant's introduction of adulterated and
25 misbranded food, and relevant conduct, is greater than \$70,000, but
26 less than \$120,000. Consequently, the base offense level is
27 increased by 8.

28 **4. Acceptance of Responsibility:** See paragraph III(B)

above.

5. **Total Offense Level:** Pursuant to the foregoing stipulations, and assuming the defendant accepts responsibility for her conduct under U.S.S.G. § 3E1.1, the defendant's total adjusted offense level is 12.

6. **Criminal History:** The parties agree that the defendant's criminal history is to be determined by United States Probation.

7. Departures or Other Enhancements or Reductions: The parties stipulate and agree that they will not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments or cross-references, other than those contemplated in the foregoing stipulations. Other than a motion by the government for a reduction in sentence pursuant to U.S.S.G. § 5K1.1, both parties stipulate and agree that neither party will move for, or argue in support of, any departure from the Sentencing Guidelines. Furthermore, neither party will seek any deviance or variance from the Sentencing Guidelines under 18 U.S.C. § 3553(a), United States v. Booker, and United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738 (2005). If either party breaches this provision, the other party shall be relieved of all of its obligations under this plea and cooperation agreement.

VII.

WAIVERS

A. **Waiver of Constitutional Rights:** The defendant understands that by pleading guilty she is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial

1 by an attorney, who would be appointed if necessary; (d) to subpoena
2 witnesses to testify on her behalf; (e) to confront and cross-
3 examine witnesses against her; and (f) not to be compelled to
4 incriminate herself.

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6 understands that the law gives her a right to appeal her conviction
7 and sentence. She agrees as part of her plea, however, to give up
8 the right to appeal the conviction and the right to appeal any
9 aspect of the sentence imposed in this case so long as her sentence
10 is no longer than the top of the Sentencing Guidelines range
11 determined by the Court consistent with the stipulations set forth
12 above about the Sentencing Guidelines variables.

13 With the same limitations that may apply to any appeal, the
14 defendant also gives up any right she may have to bring a post-
15 appeal attack on her conviction or her sentence. She specifically
16 agrees not to file a motion under 28 U.S.C. § 2255 or § 2241
17 attacking her conviction or sentence so long as the Court imposes a
18 sentence no higher than the top of the guideline range determined by
19 the Court consistent with the stipulations set forth above about the
20 Sentencing Guidelines variables.

21 If the defendant ever attempts to vacate her plea, dismiss the
22 underlying charges, or reduce or set aside her sentence on any of
23 the counts to which she is pleading guilty, other than as set forth
24 above in this section, the government shall have the right (1) to
25 prosecute the defendant on any of the counts to which she pleaded
26 guilty; (2) to reinstate any counts that may be dismissed pursuant
27 to this plea and cooperation agreement; and (3) to file any new
28 charges that would otherwise be barred by this plea and cooperation

1 agreement. The decision to pursue any or all of these options is
2 solely in the discretion of the United States Attorney's Office. By
3 signing this plea and cooperation agreement, the defendant agrees to
4 waive any objections, motions, and defenses she might have to the
5 government's decision. In particular, she agrees not to raise any
6 objections based on the passage of time with respect to such counts
7 including, but not limited to, any statutes of limitation or any
8 objections based on the Speedy Trial Act or the Speedy Trial Clause
9 of the Sixth Amendment.

10 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees
11 to waive all rights under the "Hyde Amendment," Section 617, P.L.
12 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
13 litigation expenses in connection with the investigation and
14 prosecution of all charges in the above-captioned matter and of any
15 related allegations.

16 **VIII.**

17 **ENTIRE PLEA AND COOPERATION AGREEMENT**

18 Other than this plea and cooperation agreement, no agreement,
19 understanding, promise, or condition between the government and the
20 defendant exists, nor will such agreement, understanding, promise,
21 or condition exist unless it is committed to writing and signed by
22 the defendant, counsel for the defendant, and counsel for the United
23 States.


24 **IX.**

25 **APPROVALS AND SIGNATURES**

26 **A. Defense Counsel:** I have read this plea and cooperation
27 agreement and have discussed it fully with my client. The plea and
28 cooperation agreement accurately and completely sets forth the

1 entirety of the agreement. I concur in my client's decision to
2 plead guilty as set forth in this plea and cooperation agreement.

3
4 DATED: February 18, 2009


ROBERT D. WILKINSON
Attorney for Defendant

5
6
7
8 **B. Defendant:** I have read this plea and cooperation agreement
9 and carefully reviewed every part of it with my attorney. I
10 understand it, and I voluntarily agree to it. Further, I have
11 consulted with my attorney and fully understand my rights with
12 respect to the provisions of the Sentencing Guidelines that may
13 apply to my case. No other promises or inducements have been made
14 to me, other than those contained in this plea and cooperation
15 agreement. In addition, no one has threatened or forced me in any
16 way to enter into this plea and cooperation agreement. Finally, I
17 am satisfied with the representation of my attorney in this case.

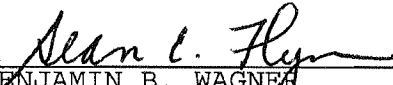
18
19 DATED: February 18, 2009


JENNIFER LOU DAHLMAN, Defendant

20
21 **C. Attorney for United States:** I accept and agree to this
22 plea and cooperation agreement on behalf of the government.

23
24 DATED: February 18, 2009

LAWRENCE G. BROWN
Acting United States Attorney

25
26 By: 
27 BENJAMIN B. WAGNER
28 SEAN C. FLYNN
Assistant U.S. Attorneys

1 processed tomato product by SK Foods that have been sold to a
2 customer are accompanied by a Certificate of Analysis ("COA"), which
3 identifies the particular grading factors (i.e., pH, mold count,
4 color, viscosity and NTSS) derived from the laboratory testing of
5 the product. Additionally, SK Foods routinely affixes labels to the
6 actual shipping containers carrying processed tomato product
7 destined for customers. These container labels, along with the
8 bills of lading and invoices accompanying a customer-bound shipment,
9 typically identify the NTSS level of the processed tomato paste.
10 Often times, duplicate copies of the documents described above also
11 are faxed or mailed to SK Foods customers at the time of product
12 shipment.

13 Beginning in at least 2004, and continuing until April 2008, at
14 the direction of senior leaders and directors of SK Foods, it was a
15 regular practice for Dahlman to knowingly cause the falsification of
16 the various grading factors and data contained on the COAs, bills of
17 lading, invoices and bin labels (hereinafter, "quality control
18 documents") that accompanied customer-bound shipments of tomato
19 product, which was produced, purchased and sold by SK Foods.
20 Specifically, Dahlman routinely caused the falsification of these
21 documents so that they reflected mold count levels in SK Foods'
22 tomato product as being below the applicable Food Defect Action
23 Level in many instances when, in fact, those levels were
24 significantly above the federal threshold. In other instances,
25 Dahlman caused the falsification of quality control documents so
26 that they reflected inflated NTSS levels that were higher than what
27 the tomato product actually contained, as well as altered pH, color,
28 and viscosity values. Dahlman subsequently caused the distribution
of such product, along with the falsified quality control documents,
to certain of SK Foods' customers. Dahlman also routinely caused
duplicate copies of falsified quality control documents to be sent
and transmitted to SK Foods' customers via facsimile and United
States mail at the time of shipment.

Dahlman's actions described above were conducted at the express
instruction, direction and with the assistance of senior leaders and
directors of SK Foods, and were intended to make it appear to SK
Foods' customers as if particular shipments of processed tomato
product were compliant with USDA and FDA standards, and with
customer specifications, when in fact they were not. Dahlman's
conduct, and the conduct of certain leaders and directors of SK
Foods, was undertaken with the intent to defraud and mislead SK
Foods' customers. As a result of such conduct, adulterated and
misbranded processed tomato product was frequently introduced into
interstate commerce, and SK Foods' customers were fraudulently
induced to pay for such product.

For example, during 2007, SK Foods experienced a period during
which it was unable to provide an adequate supply of processed
tomato paste containing 31% NTSS (Natural Tomato Soluble Solids) in
order to meet its contractual obligations to certain customers,
including Kraft Foods, Inc. ("Kraft"). In an attempt to alleviate
the shortage, a senior leader of SK Foods contacted a competing
manufacturer of processed tomato products in February 2007, and

1 arranged to purchase approximately 3,400,000 pounds of processed
2 tomato product containing lower NTSS concentrations of 26% and 28%.
3 The product purchased from the competitor was also classified as
4 "high mold," and uniformly contained mold counts significantly in
5 excess of 40%. During the course of purchasing the product, the
6 senior leader of SK Foods assured the owner of the competing company
7 that the product would be sold to customers outside the United
8 States.

9 The product purchased from the competitor did not meet the
10 specifications contained in certain of SK Foods' existing contracts,
11 and was adulterated and unsaleable in the United States due to its
12 excessive mold content. In order to conceal its inferior quality,
13 and at the direction of certain leaders and directors of SK Foods,
14 Dahlman misbranded the product by causing the falsification of
15 certain customer-bound quality control documents so that they
16 incorrectly reflected the product as uniformly containing 31% NTSS
17 tomato paste and a mold count at or below 40%. Furthermore, at the
18 direction of certain leaders and directors of SK Foods, Dahlman
19 subsequently caused the adulterated and misbranded tomato product,
20 and the accompanying falsified documentation, to be shipped during
21 the spring of 2007, via interstate carrier, from SK Foods'
22 facilities in the Eastern District of California to Kraft's
23 facilities in other states. One such shipment occurred on or about
24 April 18, 2007. On that date, SK Foods shipped adulterated and
25 misbranded tomato product from its facilities in the Eastern
26 District of California to a Kraft facility in Darien, Wisconsin.
27 The product was accompanied by certain quality control documents,
28 which Dahlman caused to be falsified so that they misrepresented
that the shipment consisted of 31% NTSS tomato product with a mold
count range of 36-40%. In actuality, the shipment consisted of 26%
and 28% NTSS tomato product, which contained mold count levels
between 48% and 86%. Dahlman's actions were made with the specific
intent to defraud and mislead Kraft. As a result, Kraft paid SK
Foods approximately \$46,621 for the adulterated and misbranded
tomato paste. The product did not constitute a health hazard.

In addition to adulterated tomato product purchased by SK Foods
from other processors for resale, at the direction of certain
leaders and directors of SK Foods, Dahlman also routinely caused the
introduction into interstate commerce of adulterated and misbranded
tomato product that was manufactured by SK Foods at its own
facilities. Dahlman also frequently caused the falsification of
COAs and other customer-bound quality control documents so that they
represented SK Foods manufactured tomato product as containing mold
count levels at or below 40% when, in fact, those levels were
significantly above the applicable Food Defect Action Levels. By
way of example, between 2004 and 2008 Dahlman caused the
falsification of mold count levels relating to, and subsequently
caused the shipment of, adulterated tomato product manufactured by
SK Foods as identified in the table below. Certain of these
shipments were accompanied by falsified COAs.

Customer	Date	Order #	Actual Mold Count	Falsified Mold Count	Product Origin	Shipping Destination	Pounds Shipped	Billed Amount
Nestle Frozen Foods	11/23/04	39191	46	38	E.D. of California	Utah	26,233	\$ 7,762
Barilla America, Inc. c/o Lidestri Foods, Inc.	1/04/07	56350	52	38	E.D. of California	New York	25,644	\$ 6,155
Better Baked Foods, Inc.	12/09/04	39526	48	38	E.D. of California	Pennsylvania	2,904	\$ 842
Carriage House Companies, Inc.	11/01/07	63198	62	30	E.D. of California	Kentucky	28,891	\$7,873
B&G Foods, Inc.	1/21/08	65308	52	38	E.D. of California	Maryland	2,890	\$ 1,012
ConAgra Foods	10/18/07	63034	48	38	E.D. of California	Ohio	34,877	\$ 11,858
Frito-Lay c/o Lidestri Foods, Inc.	11/07/07	63067	52	40	E.D. of California	New York	37,603	\$ 12,033

Dahlman's conduct, as outlined above, violated 21 U.S.C. §§ 331(a) and 333(a)(2).